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OFFICE OF THE COUNTY AUDITOR INTEROFFICE MEMORANDUM

TO: All Council Members
FROM: Lauren M. Smelkinson, County Auditor
DATE: February 26, 2016
SUBJECT: Addendum to Council Meeting Notes

Please find attached an updated fiscal note for Bill 4-16 to the Council Meeting Notes issued February 25, 2016. You will note additional information and an attached letter.

This item will be discussed at the March 1, 2016 work session for the March 7, 2016 Council meeting.

Attachment

cc: notes distribution list

Bill 4-16**Council District(s) 3**

Councilmembers Kach and Marks

Mercantile Exposition Overlay District

Bill 4-16 prohibits satellite simulcast betting (off-track betting) and intertrack betting at the Maryland State Fair property in Timonium.

The Maryland State Fair & Agricultural Society, Inc. is a Maryland non-profit corporation that owns and operates the 100-acre fairgrounds property abutting York Road in Timonium. The annual State Fair has been held there for over 100 years. Currently, the Fair conducts 10 days of thoroughbred racing in conjunction with the State Fair in late August of each year.

In 2012, the Council created the Mercantile Exposition Overlay District. The district is applied to a tract of land of at least 80 acres, zoned for commercial or industrial use, that is owned by an agricultural society. The uses permitted consist of a variety of commercial and agricultural activities. Slot machines and video lottery facilities are expressly prohibited (Bill 16-12). The district was applied to the Fairgrounds property during the 2012 CZMP.

One of the permitted uses is “thoroughbred horse racing and pari-mutuel betting”, i.e., the 10 days of racing during the State Fair and betting thereon, including off-track betting during those 10 days. See the attached letter of advice (Exhibit A), dated February 16, for a more complete explanation of the background and effect of Bill 16-12.

The Maryland Jockey Club has applied for a permit from the Maryland Racing Commission to operate a satellite simulcast betting facility (off-track betting) at the Maryland State Fairgrounds. Bill 4-16 proposes to expressly prohibit off-track betting at a mercantile exposition overlay district, effectively prohibiting off-track betting at the Maryland State Fairgrounds except during the authorized 10 days of racing that are conducted concurrently with the State Fair.

With the affirmative vote of five members of the County Council and signature by the County Executive, Bill 4-16 will take effect on the date of enactment, retroactive to January 1, 2016.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE



TO: The Honorable A. Wade Kach
Councilman, Third District

CC: Thomas J. Peddicord, Jr.
Legislative Counsel/Secretary

FROM: Thomas H. Bostwick
Deputy Legislative Counsel/Secretary

SUBJ: Timonium Fairgrounds and Bill 16-12

DATE: February 16, 2016

You requested an opinion and interpretation of Bill 16-12 as it relates to uses that are permitted at the Timonium Fairgrounds property. In particular, you inquired as to whether Bill 16-12 permits, or intended to permit, off-track betting on the Fairgrounds property beyond the ten days it may be permitted during the Maryland State Fair.

The issue of placing a Fairgrounds-specific Zone on the Timonium Fairgrounds property is not entirely new. On February 17, 2009, Councilman McIntire introduced Bill 14-09 entitled "Zoning Regulations – Fairgrounds." That Bill established a definition of the term "fairgrounds" and listed certain zones where fairgrounds would be permitted. At that time, there were also discussions with Maryland State Fair General Manager Max Mosner and Greater Timonium Community Council (GTCC) President Eric Rockel. One of GTCC's main concerns then was the fear of casino gambling (slots) at the property. At some point, Bill 14-09 was withdrawn with no further action.

Fast-forward to 2012, during the CZMP, Councilman Huff wanted to develop an Overlay District that could be applied to the Timonium Fairgrounds property, which would list the uses that were permitted and the uses that were prohibited. This would essentially do three things: one, it would give the nearby community a degree of

certainly as to what uses were permitted at the Fairgrounds; two, it would also give Fairgrounds officials clarification that the uses they had undertaken over the years would continue, and that new, similar uses could be undertaken without a lot of "red tape;" and three, it would specifically prohibit video lottery terminals (slots) on the property.

In Bill 16-12, the use listed as number 28 is "Thoroughbred horse racing and pari-mutuel betting as authorized under title 11 of the Business Regulation Article of the Annotated Code of Maryland." Title 11 is entitled "Horse Racing" and within that Title are Subtitles and Parts that regulate racing and betting. In the Annotated Code, the definition of "racing" includes "special thoroughbred racing."¹ Special thoroughbred racing includes "thoroughbred horse racing held by the Maryland State Fair and Agricultural Society." This racing is authorized for only ten days and traditionally occurs during the Maryland State Fair.

In addition, "pari-mutuel betting" is defined as "the system of betting in which those who successfully bet on horses that finish in specified positions share in the mutuel pool." Subtitle 8 of Title 11 is also entitled "Pari-mutuel Betting." Within that Subtitle is "Intertrack Betting" and "Satellite Simulcast Betting" (a/k/a "Off-Track Betting").

Based on the above definitions and given the wording of Bill 16-12, one could argue that the use listed as number 28 allows only thoroughbred horse racing (and only special thoroughbred racing at that). The addition of the words "and pari-mutuel betting" merely further describes the system in which the purses for the thoroughbred racing are distributed. It does not necessarily confer an additional use beyond thoroughbred horse racing.

It could also be argued that, because "satellite simulcast betting" is a Part within the more general "pari-mutuel betting" Subtitle of the Annotated Code, that the intent of Bill 16-12 and the use listed as number 28 is to permit thoroughbred horse racing and satellite simulcast betting together at the same time. If that is the case, by definition, it can only occur during the ten days of the Fair as above-mentioned. If the intent of Bill 16-12 was to allow satellite simulcast betting beyond that, it would have listed the "pari-mutuel betting" use as a separate, stand-alone use and not tied with an "and" to the thoroughbred horse racing use.

It is also noteworthy that this interpretation is not in conflict with the Attorney General opinion dated February 2, 2016. In that opinion, Assistant Attorney General Kathryn M. Rowe writes "it is clear that the General Assembly intended to authorize the State Fair Society to participate as a receiving track on days outside the ten days on which they are ordinarily authorized to conduct live racing." What Ms. Rowe writes is correct. But that does not prevent the County Council, as it did in Bill 16-12, from

¹ The definition of "racing" also includes harness racing, mile thoroughbred racing, steeplechase or hurdle racing, flat racing, and quarter horse racing, which are not applicable to this inquiry.

limiting that authorization. In fact, Section 11-817 of the Business Regulation Article of the Annotated Code, pertaining specifically to "satellite simulcast betting" (again, a reference to "Off-Track Betting") states in subsection (b) that "Nothing in this Part III of this subtitle may preempt local zoning laws or ordinances." Put simply, the County Council has the final say as to whether to allow the Timonium Fairgrounds property authorization for satellite simulcast betting, and it can be for ten days a year, 365 days a year, or not at all.

In conclusion, it is my opinion that Bill 16-12, and specifically the use listed as number 28, allows live thoroughbred horse racing as authorized during the ten days of the Maryland State Fair, and also allows intertrack betting and satellite simulcast betting only during, and in conjunction with, the live thoroughbred horse racing at the Fair.